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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,249	09/25/2006	Hajime Saito	0033-1107PUS1	7406
2292 7590 01/05/2011 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER GREEN, TRACIE Y				
ART UNIT		PAPER NUMBER		
2879				
NOTIFICATION DATE		DELIVERY MODE		
01/05/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/594,249

Applicant(s)

SAITO ET AL.

Examiner

TRACIE GREEN

Art Unit

2879

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 14 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3 and 8-18.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Peter J Macchiarolo/
Primary Examiner, Art Unit 2879

Continuation of 11. does NOT place the application in condition for allowance because:

Specifically, the applicant presents the following allegations to assert that the examiner should withdraw the previous rejection:

1) "nothing in [0018] or [0006] of Kelsey that suggests that these "phosphors" can somehow be used to modify the Shimizu light emitting device that has the preferred "phosphor" of col. 13, lines 5-50 that is represented by the general formula ..."

2) the usage of the word "could" bottom of page 2 "As has been previously pointed out, merely suggesting that the teachings of Kelsey as to forming a gallium nitride phosphor powder "could" lead the worker of ordinary skill in the art to modify Shimizu in some undefined way to somehow include this Kelsey gallium nitride"

3) pages 3-8, the examiner violates the rationale under 103 by providing no prima facie case of obviousness thus (TSM) and is therefore being violated.

The examiner respectfully disagrees with the applicant, in particular in the Shimizu reference, the applicant has pointed to the preferred phosphor. However preferred does not mean required, the examiner has asserts that if given the choice a YAG type phosphor would be good. This however does not preclude one of ordinary skill to improve upon the device of Shimizu with an illuminant material that has efficient emission. The applicant asserts that no one of ordinary skill in the art would use some undefined method to utilize the phosphor as presented by Kelsey. First the method is not undefined, mixing an illuminant within the resin material is well known. Furthermore, the applicant acts as if the person of ordinary skill would try and stick the phosphor in a YAG structure. The examiner submits that one of ordinary skill "would" (emphasis added) know to completely substitute out the illuminate of Shimizu is not beyond comprehension. As again, preferred does not mean required, finally to the applicant's assertion that the requirements for 103 obviousness has not be upheld, the examiner again respectfully disagrees. A person of ordinary skill in the art "would" want an efficient device, "would" understand the use of an illuminant in a material in a resin and "could" do so without causing any harm to the device of Shimizu or rendering it inoperable. If the applicant believes that it would be, the applicant is invited to provide more evidence so that it may be made of record and take into consideration. Otherwise, the examiner believes the rejection is proper and the usage of the word "could" does not detract from the motivation as provided. The rejection remains unchanged. .